

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 328**

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement on September 24, 2007 when Claimant, D.D. Mealancon (1641190) was assessed a Level 3 30-Day Record Suspension for violation of Maintenance of Way Operating Rules 1.1.3-Safety; Accidents, Injuries and Defects; and 1.2.5-Safety; Reporting when the Claimant failed to immediately report injury sustained on August 31, 2007, and;**
- 2. As a consequence of the violation referred to in part 1 the Carrier should reinstate the Claimant with all seniority, vacation, rights unimpaired and pay for all wage loss commencing September 24, 2007, and remove any mention of discipline from his record.**

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On August 31, 2007, Claimant, while moving a crossing plank consisting of two ties bolted together, felt some pull on his back but did not report it immediately as he thought it was nothing but a sprain that would subside by the time he reported back to work (August 31, 2007 was a Friday, his rest days were Saturday and Sunday and Monday was the Labor Day holiday).

Instead of abating, the pain increased and at about 1:00 AM on September 3, he went to the emergency room at the local hospital. The diagnosis was muscle spasms. Claimant also stated he called his Supervisor's number at about 1:00 AM on September 3. He received no answer, but he contends he left a message regarding the injury.

Because the Carrier believed he did not promptly report the injury on Friday, August 31, 2007, he did not comply with the Rule of promptly reporting an injury.

The Carrier convened an investigation:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to immediately report your personal injury that took place at Fruitland Road Crossing on the Harbor Sub Division on Friday, August 31, 2007 at approximately 0930 hours, while assigned as Section Gang Trackman on gang TSEC0742.

You may arrange for representation in line with the provisions of agreement or schedule governing your working conditions; and you may likewise arrange for the attendance of any witnesses you desire, at your own expense."

Following the investigation, the Carrier on November 1, 2006, wrote Claimant to advise he had been assessed a Level S record suspension of 30 days and a probationary period of 3 years, warning that if he would commit another serious Rule violation during this 3 year period, he would be subject to dismissal.

There is in existence a rule about soft tissue type injury which allows an employee 3 days in which to report the injury to his Supervisor if it did get worse.

Claimant suffered the sprain or strain about 0930 AM on August 31, 2007, and went to the emergency room around 1:00 AM on September 3. He attempted to call his Supervisor before he went to the emergency room but his Supervisor was on vacation, away from his cell phone. The emergency room doctor diagnosed his injury as a strain, recommended one week of light duty and gave him some pain pills.

In this instance, Claimant did react within 3 days as you do not count the first day.

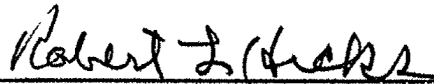
The claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



David D. Tanner, For the Employees



Samantha Rogers, For the Carrier

Dated: 10/16/08